HON'BLE DR. JUSTICE G. YETHIRAJULU

W.P.No. 18740 of 2003

DATED: 13-12-2007

Between:

1. **Fishermen Co-operative Society,
Vemulakonda (V), Veligonda (M),
Nalgonda District represented by its President
Yerva Kanakaiah S/o Rajaiah, aged 60 years,
R/o Vemulakonda (V),
Veligonda (M, Nalgonda District.**

……. Petitioner

and

1. **The District Collector,
Nalgonda District and 14 others.**

…….. Respondents

HON'BLE DR. JUSTICE G. YETHIRAJULU

W.P.No. 18740 of 2003

ORDER:

This writ petition is filed by a Fishermen Cooperative Society seeking to declare that the notices issued by the Assistant Director of Fisheries, Nalgonda vide letter No.1116/E/2002, dated 27-05-2003 and 07-08-2003 to remove 26 members from the primary membership of the society under Section 21-B of A.P. Co-operative Societies Act, 1964 (for short 'the Act') as bad, arbitrary and contrary to the provisions of the Act.

2. It is contended by the petitioner-society that 85 members have been admitted by the society within which 26 members were removed on 10-01-2001 and admitted 10 new members. Now the members of the society are 65. All the members of the society are fisherman by caste and profession and eking out their livelihood by fishing operations.

A Commissioner was appointed in W.P.No.25467 of 1997 to weed out the bogus members in the society and as per the report of the Commissioner, 26 members were removed by the Special Officer from the primary membership of the society. Subsequently, on a representation made by some of the members, the Collector constituted a nodal committee and the committee visited the village in the year 2001 and recommended for removal of 26 members. Accordingly, the Assistant Director issued a notice on 27-05-2003 to remove the 26 members identified by the Committee and in pursuance of that, a general body meeting was held on 14-06-2003 and 8 members were removed from the rolls of the society. Subsequently, the Assistant Director issued another notice, dated 07-08-2003 mentioning that the disqualified members were not removed from the rolls of the members and therefore, he directed the society to remove

the 26 members from the rolls of the members. The petitioner questioned these notices on the ground that the Assistant Director has no power to direct removal of the members without there being a resolution of the general body of the society.

3. Section 21 (3) of the Act, which was introduced through the amendment, dated 05-04-2001, mentions about the authority, which is entitled to remove the members from the Society. Section 21 (3) of the Act reads as follows:

> **"21. Disqualification for membership of society:-**
> (1) ……
> (2) ……..
> (3) Where any person, who is not eligible for being admitted as member has been admitted as member or where the member who is disqualified to continue as such under sub-section (1) is continued as member, he shall be removed by the General body on its own motion or on a representation made to it by any member of a society or its federal society or its financing bank:
> Provided that no member shall be removed under this sub-section unless he had an opportunity of making a representation against the proposed action. A copy of the resolution removing the member shall be communicated to such person and on such communication, he shall be deemed to have ceased to be a member of the society."

As per the amended provision, the general body of the society is competent to remove the members from the society when they are found ineligible or disqualified for the membership of the society.

4. The learned counsel for the respondents submitted that under Rule 20 of the A.P. Cooperative Societies Rules, 1964 (for short 'the Rules') framed under the Act, the Registrar and the Assistant Director, who was delegated with the powers, are competent to remove the members of the society, therefore, he submitted that the impugned notices issued by the Assistant Director are in accordance with the powers exercised by him, therefore, there is no illegality in issuing those notices.

Rule 20 of the Rules reads as follows:

> **"20. Removal of a member of a society who is disqualified:-** (1) If any person, who is admitted as a member of a society becomes disqualified under Section 21 to continue as such, the Registrar may, on his own motion or on a representation made to him by any member of the society or its financing bank by an order in writing, declare that he shall cease to be a member of the society from the date of such disqualification.
>
> (2) Before passing an order under sub-rule (1) the Registrar shall give such person an opportunity to state his objections, if any, for the proposed action and if the person wishes to be heard, he shall be given opportunity to be heard. The Registrar's decision shall be final and binding on the society and it shall not be questioned in any court."

5. The above Rule was framed earlier to the amendment of Section 21 and the amended Sub-section (3) of Section 21, which was introduced through the amendment of 2001, prevails over the Rule, therefore, it is the general body that is competent to remove the ineligible or disqualified members from the rolls of the society. The general body has already passed a resolution removing 8 persons as ineligible to continue as the members of the society. The general body might have felt that the rest of the members are not liable to be removed from the rolls of the society. Therefore, in pursuance of the first notice of the Assistant Director, dated 27-05-2003, the action was taken by the general body and there is no illegality in it.

6. So far as the second notice, dated 07-08-2003 is concerned, despite removing 8 members of the society, the notice reflected 26 members as the disqualified persons even as on the date subsequent to the resolution of the general body also. Therefore, the notice, dated 07-08-2003 is liable to be quashed. If there are ineligible members in the rolls of the society, the authorities are at liberty to get them removed by appropriate authorities as provided under law.

7. In the result, the Writ Petition is allowed in part. The

notice, dated 07-08-2003 is quashed, while confirming the notice, dated 27-05-2003. The respondents are at liberty to take steps for the removal of the ineligible members, if any, if the general body inclines to remove them from the rolls of the society. No order as to costs.

DR. G. YETHIRAJULU, J

Date:13-12-2007
YCR